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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,443	12/21/2001	L. John Teuscher	BAL-108 (17451)	4830
7590	12/16/2005		EXAMINER	
Neal P. Pierotti Dority & Manning Attorneys at Law, P.A. P.O. Box 1449 Greenville, SC 29602			BOCHNA, DAVID	
			ART UNIT	PAPER NUMBER
			3679	
			DATE MAILED: 12/16/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/037,443	TEUSCHER ET AL.
	Examiner	Art Unit
	David E. Bochna	3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 November 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 and 11-18 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 18 is/are allowed.
 6) Claim(s) 1-9 and 11-17 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
2. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites “having a detachable first sleeve with the coupling” and “having a detachable second sleeve with said coupling”. There is no reference in the claims or specification, as originally filed, to a detachable first and second sleeve.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9, 11 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Webb et al.

In regard to claim 9, Webb et al. discloses a connector comprising:

A body 31 having a first end 33 defining a single opening and a second end 35 defining a single opening, the body having a passage disposed therethrough from the first end 37 to the second end 24 to allow for transport of fluids and object through the body 31,

wherein the first end includes a coupling configured to rotatably engage a first member 45 of the respiratory assembly, wherein the second end includes a coupling configured to rotatably engage a second member 19 of the respiratory assembly,

the first member 45 engageable with the first section 35, the first member 45 aligning with the first axis and rotatably engageable with a first member of the respiratory assembly, a second member 19 engageable with the second section 33, the second member 19 aligning with the second axis (end 23 of 19 aligns with axis 27) and rotatably engageable with a second member of the respiratory assembly.

wherein the only access to the passage is through the openings of the first 37 and second 24 ends, wherein the passage extends through the coupling (flange 37 and recess 35) of the first end and the coupling of the second end (flange 24 and recess 33) such that the passage changing direction at a single constant angle 43 of approximately 120 degrees through the entire body 31 (Webb et al. discloses an angle of 135 degrees which is approximately 120 degrees. It is unclear what angles are encompassed by the word “approximately”, but the Examiner is interpreting the recitation “approximately” to cover a 135 degree angle because the specification states that the angle could be anywhere between 100 and 150 degrees (see page 7, lines 19-20)).

In regard to claims 11 and 17, the first member is a tracheal tube 11 and the second member is a ventilating or humidifying tube 17.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer et al. in view of Linder.

In regard to claim 1, Meyer discloses a connector for a respiratory assembly, comprising: a body 10 having a first end and a second end, said first end defining a single opening and said second end defining a single opening, said body having a passage disposed therethrough from said first end to said second end to allow for transport of fluids and objects through said body, wherein said first end includes a coupling having a detachable first sleeve 19 with said coupling (“configured to rotatably engage a first member of the respiratory assembly” is considered intended use and given little patentable weight, as sleeve 19 is capable of engaging a respiratory assembly), wherein said second end includes a coupling 19 having a detachable second sleeve with said coupling (“configured to rotatably engage a second member of the respiratory assembly” is also considered intended use), wherein the only access to said passage is through said openings of said first and second ends, wherein said passage extends through said coupling of said first end and said coupling of said second end such that said passage changing direction at a single constant angle through the entire said body including said first sleeve and said second sleeve of said respective couplings. However, Meyer does not disclose that the angle is approximately a 120 degree angle. Linder teaches that it is common and well known in

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the art to supply pipe bends with various bending angles and that 90 degree bends and bends of approximately 120 degrees are well known equivalents in the art. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the bend angle of Meyer to include an angle of approximately 120 degrees.

In regard to claims 2 and 8, the first member and second member are again considered intended use limitations because they are not being positively recited as part of the connector.

In regard to claim 3, he first and second couplings include hollow female bell housings 11.

In regard to claim 4, said first sleeve 19 is disposable within said bell housing 11, the entire circumference of said first sleeve is rotatable with respect to said first end so that said first sleeve remains in rotating engagement with said first end, said first sleeve sized for receipt of the first member therein such that said first end rotatably engages the first member; and

said second sleeve is disposable within said bell housing 11, the entire circumference of said second sleeve is rotatable with respect to said second end so that said second sleeve remains in rotating engagement with said second end, said second sleeve sized for receipt of the second member therein such that said second end rotatably engages the second member.

In regard to claim 7, Meyer et al. does not disclose that the body is made out of plastic, but it would have been obvious to one of ordinary skill in the art to make the body out of plastic because the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

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6. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb et al. in view of and Palmer '203.

Webb et al. discloses providing a respiratory connector for the purpose of providing oxygen to a patient, and one that also swivels in order to reduce discomfort to the patient. However, Webb et al. does not disclose swivel with connectors as described by the applicant. Palmer teaches providing a swivel connector with first and second end couplings include hollow female bell housings 52, the first end coupling includes a first sleeve 90 within the bell housing, the entire circumference of the first sleeve is rotatable with respect to the first end so that the first sleeve remains in rotating engagement with the first end, the first sleeve sized to receipt of the first member therein such that the first end rotatably engages the first member; and

The second end coupling includes a second sleeve 90 within the bell housing, the entire circumference of the second sleeve is rotatable with respect to the second end so that the second sleeve remains in rotating engagement with the second end, the second sleeve sized for receipt of the second member therein such that the second end rotatably engages the second member, the first sleeve 90 has a first annular sealing member 63 on one end thereof for engagement with a first annular rib 62 on the first end, engagement between the first annular sealing member and the first annular rib causes deflection of the first annular sealing member to create an essentially hermetic seal between the first sleeve and the first end (see col. 6, lines 30-34); and

The second sleeve has a second annular sealing member 63 on one end thereof for engagement with a second annular rib 62 on the second end, engagement between the second annular sealing member and the second annular rib causes deflection of the second annular member to create an essentially hermetic seal between the second sleeve and the second end, the

first and second ends each having a stepped annular ring 58; and further comprising a first and second retainer 104 disposed in the respective annular rings for retaining the first and second sleeve in engagement with the respective first and second ends, wherein the connector is made out of a transparent material so that the swivel connector can rotate to accommodate stress relief and also accommodate a wide range of patients from infants to the aged while at the same time providing a sealed connection that does not allow entry of the atmosphere and also allows fluids passing through and collecting in the connector to be visually inspected without taking apart the connection (see claim 15 of Palmer). Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the connectors of Webb et al. to include the first and second coupling ends and transparent material, as taught by Palmer, so that the swivel connections of Webb et al. could be better sealed against outside air entering at the swivel points so that the coupling could both ease the discomfort of the patient and also supply a purer supply of oxygen to the patient and also allow the interior to be more easily inspected.

7. Claims 9,11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb et al. in view of Lorenzen et al.

In regard to claim 9 Webb et al. discloses a connector comprising:

A body 31 having a first end 33 defining a single opening and a second end 35 defining a single opening, the body having a passage disposed therethrough from the first end to the second end to allow for transport of fluids and object through the body, the passage changing direction at a single constant angle 43 between the first end 33 and the second end 35,

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the first member 45 engageable with the first section 35, the first member 45 aligning with the first axis and rotatably engageable with a first member of the respiratory assembly, a second member 19 engageable with the second section 33, the second member 19 aligning with the second axis (end 23 of 19 aligns with axis 27) and rotatably engageable with a second member of the respiratory assembly,

wherein the first end includes a coupling (flange 33) configured to rotatably engage a first member 15 of the respiratory assembly, wherein the second end includes a coupling (flange of 35) configured to rotatably engage a second member 45 of the respiratory assembly, wherein the only access to the passage is through the openings of the first and second ends. Webb does not disclose that the angle is 120 degrees. However, it would have been obvious to make a respiratory connector with a 120 degree angle because the practice of making pipe connections with 120 degree angles is common and well known in the art, as demonstrated by Lorenzen et al. in fig. 1 or fig. 36.

In regard to claims 11 and 17, the first member is a tracheal tube 11 and the second member is a ventilating or humidifying tube 17.

7. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb et al. in view of Lorenzen et al. and further in view of Palmer '203.

Webb et al. in view of Lorenzen et al. discloses providing a respiratory connector for the purpose of providing oxygen to a patient, and one that also swivels in order to reduce discomfort to the patient. However, Webb et al. does not disclose swivel with connectors as described by the applicant. Palmer teaches providing a swivel connector with first and second end couplings include hollow female bell housings 52, the first end coupling includes a first sleeve 90 within

the bell housing, the entire circumference of the first sleeve is rotatable with respect to the first end so that the first sleeve remains in rotating engagement with the first end, the first sleeve sized to receipt of the first member therein such that the first end rotatably engages the first member; and

The second end coupling includes a second sleeve 90 within the bell housing, the entire circumference of the second sleeve is rotatable with respect to the second end so that the second sleeve remains in rotating engagement with the second end, the second sleeve sized for receipt of the second member therein such that the second end rotatably engages the second member, the first sleeve 90 has a first annular sealing member 63 on one end thereof for engagement with a first annular rib 62 on the first end, engagement between the first annular sealing member and the first annular rib causes deflection of the first annular sealing member to create an essentially hermetic seal between the first sleeve and the first end (see col. 6, lines 30-34); and

The second sleeve has a second annular sealing member 63 on one end thereof for engagement with a second annular rib 62 on the second end, engagement between the second annular sealing member and the second annular rib causes deflection of the second annular member to create an essentially hermetic seal between the second sleeve and the second end, the first and second ends each having a stepped annular ring 58; and further comprising a first and second retainer 104 disposed in the respective annular rings for retaining the first and second sleeve in engagement with the respective first and second ends,

wherein the connector is made out of a transparent material so that the swivel connector can rotate to accommodate stress relief and also accommodate a wide range of patients from infants to the aged while at the same time providing a sealed swivel connection that does not

allow entry of the outside atmosphere and also allows fluids passing through and collecting in the connector to be visually inspected without taking apart the connection (see claim 15 of Palmer). Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the connectors of Webb et al. to include the first and second coupling ends and transparent material, as taught by Palmer, so that the swivel connections of Webb et al. in view of Lorenzen et al. could be better sealed against outside air entering at the swivel points so that the coupling could both ease the discomfort of the patient and also supply a purer supply of oxygen to the patient and also allow the interior to be more easily inspected.

Response to Arguments

8. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.
9. Applicant's arguments with respect to claims 9 and 11-17 have been considered but are not persuasive. The sleeve ends of Meyer et al. are aligned with the body as explained in further detail above.

Allowable Subject Matter

10. Claim 18 is allowed.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. Bochna whose telephone number is (571) 272-7078. The examiner can normally be reached on 8-5:30 Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David E. Bochna
Primary Examiner
Art Unit 3679